VIRGINIA LAW REGISTER

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Virginia State Bar Association.

REPORT OF THE SEVENTEENTH ANNUAL MEETING OF THE VIRGINIA STATE BAR ASSOCIATION. *Richmond. Waddey & Co., 1906.*—We have received the report of the transactions of the seventeenth annual meeting of the Virginia State Bar Association, which consists of some twenty-eight pages of the proceedings of the meeting; some thirty pages of memorials and sixty-nine pages of the addresses and papers read upon the occasion.

The Hon. Hannis Taylor's article upon the "Legitimate Functions of Judge Made Law" is well worth the reading of those whose misfortune it was not to have heard it; whilst the treatise on the "Action of Ejectment," by Hon. A. A. Phlegar, is not only of interest but of value to that portion of the profession engaged in litigation in which land titles are involved. Mr. William L. Royall's very entertaining and erudite sketch of "Lord Mansfield's Relations to Our Laws," reads almost as well as it was heard by a charmed audience; and the paper read by Hon. Eugene C. Massie on the "Reform of Our Land Laws" will add another interesting monograph to the much-discussed "Torrens' Land Law."

It is to be regretted that the members attending the bar association do not take a lesson from our neighboring lawyers in West Virginia and discuss the papers read before them.

The meeting at Old Point will be remembered as one exceedingly pleasant, but one in which the lawyers showed wonderful self control in the matter of holding their tongues.

This is the first volume issued under the auspices of the new secretary, John B. Miner, Esq. It reflects credit upon his editorship, and indicates that the association made no mistake in selecting him as the successor of the genial, able and indefatigable, Eugene Massie.

West Virginia State Bar Association.

PROCEEDINGS OF THE WEST VIRGINIA BAR ASSOCIATION AT ITS TWENTY-FIRST ANNUAL MEETING (*1905*). *Edited by W. G. Peterkin, Secretary. Published by the State Journal Company, Parkersburg, W. Va.*—We have received and read with much interest the proceedings of our sister state bar association at its last meeting. We note with pleasure that these meetings, while not as largely attended as those of the Virginia Bar Association, seem to attract the earnest attention and active co-operation of those who do attend. The discussions upon the various papers and addresses before the body seem to be participated in by a large number of the members present, and an interest seems to be taken in them from which our own bar association might learn a lesson.

The article by Mr. A. M. Poundstone is quite a valuable resume of the steps of procedure in civil cases before judgment or decree in the various states.

The article by Mr. Mason Ambler on the preservation of forests, streams and fuels is one of more than ordinary interest; and Mr. Hubbard's address reviewing the work of the bar association is one we can commend to the members of the bar association of Virginia.

Like ourselves, they have accomplished but little, but that little is an indication of what the bar association might do, if it went about things in the right way.

We note that the Torrens' system is "dragging its weary length along the ground," before this association, not, however, yet having got to the point of a recommendation for its adoption.

It is to be regretted that the addresses are printed in such very small type and that the paper is evidently a bad specimen of the "pulp" variety.

Testimony of Deceased Witness on Former Trial.

The trial of John Richards for killing Francis in Floyd county, with which doubtless the profession is familiar, will present to the trial court an opportunity to repudiate and depart from the position which seems to have been taken by our supreme court in Montgomery *v.* Com., 99 Va. 833, holding that where a witness in a criminal case has died, his testimony on a former trial can not be

given in evidence, even by the accused. In this case the chief witnesses for the accused have since died, and without their testimony things will undoubtedly go hard with him. The court based their decision on Finn *v.* Com., 5 Rand. 701, which was *obiter* as to a dead witness, as the witness in Finn's case was absent from the commonwealth. This evidence has been generally admitted *ex necessitate rei,* as an exception to the hearsay rule. Besides, the tendency nowadays is towards the admission rather than the exclusion of evidence, and if the courts do not depart from this harsh rule, in our opinion it should be annulled by the legislature. It is a significant fact that this point is omitted both from the syllabus and opinion in 99 Va.; it will be found in 37 Southeastern 841.* If the lower court excludes this evidence, as it will likely do, we hope the supreme court will be given a chance to correct the injustice of the present rule—if indeed it can be called a rule.

Churchman Rate Bill Held Unconstitutional.

Because of the great interest that is felt in railroad rate legislation at this time, we have decided to give the profession the decision rendered by Judge Holt in the corporation court for the city of Staunton, in which he held the Churchman two-cent mileage bill unconstitutional, and thereby nipped in the bud the cherished hopes of commercial travelers, and would-be globe trotters. The court bases its conclusions on a decision of the federal supreme court, and so the publishers will print this federal case, too, along with the decision of Judge Holt.

To Contributors.

For the convenience of the publishers of the LAW REGISTER, we request that all contributions be sent in on or before the twentieth of the month, as the REGISTER for the ensuing month goes to press at that time.

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*This would indicate that the court held the matter open, so to speak, and was itself in doubt.